



Mortgage Lender Exam Created

We are pleased to announce that the Education Committee of the Residential Mortgage Commission has finalized work on the upcoming residential mortgage exam. Significant efforts have been expended, and progress made in the goal of completing a comprehensive exam that meets the following criteria as established by the Education Committee of the Utah Residential Mortgage Regulatory Commission:

"New applicants and seasoned professionals alike will no doubt have to prepare themselves well in order to pass this exam."

RELEVANT – Do the questions on the exam apply to the mortgage industry generally, and specifically to the job of being a mortgage loan officer?

GENERAL – Are the questions broad enough to apply to the majority of the residential mortgage lending industry?

FUNDAMENTAL – Does a knowledge of the questions on the exam help an individual to do their job as a mortgage loan officer more effectively?

FAIR – Do the questions test a reasonable level of knowledge?

With these objectives in mind, the education committee and the Mortgage Commission have labored since the spring of this year in the creation of this exam. It is their hope that industry standards will be increased generally as licensees test for minimum competency.

Beginning January 1, 2004, all new mortgage license applicants must take and pass the new comprehensive residential mortgage lender's examination. By the end of

2004, existing mortgage licensees must pass the exam. The exam covers a comprehensive list of subjects approved by the Commission (see exam content outline on page 2). New applicants and seasoned professionals alike

will no doubt have to prepare themselves well in order to pass this exam. Since the exam is complete and thorough, it is recommended that applicants put forth significant effort in learning and reviewing the content outline and correspond-

ing text references before taking the exam in order to successfully pass. **There are 11,000 mortgage licensees. Take the test early in 2004!**

The Education Committee and the Mortgage Commission are optimistic that the industry will recognize the positive benefits resulting from the creation of this competency exam.



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Utah Mortgage Lender Exam Content Areas

I. General Mortgage Industry Knowledge

- A. Mortgage categories
 - 1. Conventional/conforming
 - 2. Government (FHA, VA)
 - 3. Jumbo/non-conforming
 - 4. Sub-prime
 - 5. Niche
 - 6. Second mortgage
 - 7. Construction
- B. Mortgage products
 - 1. Fixed rate
 - 2. Variable rate/ARMs
 - 3. Balloons
- C. Retail product pricing
 - 1. Service release premium (SRP)
 - 2. Yield spread premiums (YSP)
 - 3. Lender fees
 - 4. Price adjustments (incl. discounts)
- D. Financial calculations
 - 1. Payment
 - 2. Interest rate
 - 3. Closing costs
 - 4. Other
- E. Primary and secondary markets
 - 1. Primary
 - 2. Secondary
 - a. Fannie Mae
 - b. Freddie Mac
 - c. Ginnie Mae
- F. Other general mortgage matters

II. Mortgage-Related Professional Practices

- A. General real estate law and terms
 - 1. Real estate purchase contracts

- 2. Real estate ownership and restrictions
 - a. Types of ownership (joint tenants, tenancy in common, etc.)
 - b. Liens and other restrictions
- B. Appraisals
 - 1. Approaches to valuation
 - a. Cost
 - b. Income
 - c. Market
- C. Insurance
 - 1. Hazard and related insurance
 - 2. Mortgage insurance
 - a. Coverage
 - b. Fannie/Freddie/FHA/VA requirements
 - c. Lender paid
 - d. Removing mortgage insurance
 - 3. Title and title insurance

III. Federal Mortgage-Related Law and Regulatory Compliance

- A. RESPA (Real Estate Settlement Procedures Act) and Regulation X
 - 1. Good Faith
 - 2. HUD-1
 - 3. Settlement cost booklet
 - 4. Notice of transfer of servicing
 - 5. Aggregate escrow analysis
 - 6. Kickbacks and referral fees
 - 7. Exempt transactions
 - 8. Terms defined in RESPA
 - 9. Settlement services
 - 10. Penalties

- B. Truth in Lending Act (i.e., Regulation Z, APR, definitions)
 - 1. Advertising
 - 2. Disclosure
 - 3. Notice of right to cancel
 - 4. HOEPA
- C. Fair lending laws
 - 1. Fair Housing Act
 - 2. Equal Credit Opportunity Act
 - 3. Home Mortgage Disclosure Act
 - 4. Fair Credit Reporting Act
- D. Agencies related to mortgage lending
 - 1. Fannie Mae
 - 2. Freddie Mac
 - 3. Ginnie Mae



Utah Real Estate Mortgage Monitor

Purpose: To provide information and education to the residential lending community which will help them be successful in competently serving Utah consumers.

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- 4. Federal Trade Commission
- 5. Department of Housing and Urban Development
- 6. Department of Veterans' Affairs
- E. Identification and consequences of fraud

IV. Residential Mortgage Lending Practice

- A. Qualifying process
- B. Applications
 - 1. Uniform Residential Loan Application
 - 2. Disclosure documents (i.e., GFE, TIL, ECOA)
- C. Assembling, verifying and evaluating applicant information
 - 1. Financial statements and tax returns
 - 2. Credit history and credit scoring
 - 3. Income
 - 4. Expenses and ratios
 - 5. Property
 - 6. Types of acceptable assets
- D. Underwriting and program guidelines
 - 1. FHA
 - 2. VA
 - 3. Fannie Mae, Freddie Mac
 - 4. Other
- E. Relationship with clients
 - 1. Lock-in and float agreements
 - 2. Prepayment penalties
 - 3. Handling client funds
 - 4. Adverse action procedures
 - 5. Legal implications of giving tax and real estate advice

F. Closing process and documents

- 1. Closing conditions and funding conditions
- 2. Borrower review of closing
- 3. Uniform Settlement Statement (HUD-1)
- 4. Note, trust deed, and applicable riders
- 5. TIL Federal Box Form
- 6. Compliance documents
- G. Post-closing issues
 - 1. Repurchasing/buy-back
 - 2. Compliance
 - 3. Early default
 - 4. Premium recovery
 - 5. Foreclosure

V. Utah Statutes and Regulations Governing the Mortgage Business

- A. Statutes
 - 1. Utah Residential Mortgage Practices Act: 61-2c-101 through 61-2c-403
 - 2. Utah Mortgage Lending and Servicing Act: 70D-1-6 Fee Restrictions
- B. Rules
 - 1. Residential Mortgage Administrative Rules: R162-202 through R162-209

Preparation for the Mortgage Lender Exam

The statute that calls for a mortgage lender exam does not include any requirement for pre-license education. Therefore, it is the responsibility of candidates to study and prepare themselves to pass the examination. The exam content outline should serve as a guide in your studies. The Division is not aware of any single textual reference that comprehensively covers all test subject areas for the general portion of the exam. Each applicant will need to gather study materials that will assist him or her in preparing for the exam. The Utah Residential Mortgage Statute and Administrative Rules are available from the Division of Real Estate for \$2.00 if picked up at the Division. This same publication is available by mail for \$4.00. Your check must be submitted to the Division prior to the booklet being mailed to you. All state exam questions come from this booklet. The same information is available from our website as well. From www.commerce.utah.gov/dre, select "About us" to link to the statute and administrative rules.

The Division does not approve individual courses or instructors for exam preparation. If you choose to participate in a training course before sitting for the exam, it is your responsibility to carefully select your course provider. Ask for references from others who are satisfied with the training being offered. The Division will not be able to supply information regarding course providers, since they are not reviewed or approved by us.

One is the Loneliest Number...

Beginning 1/1/04 mortgage lenders may ONLY work for ONE licensed entity. You may change from one entity to another, if you give written notification signed by the new entity's control person. Change cards will soon be available from the Division for this purpose, but until then, your signed written notification will be sufficient.

He Who Hesitates . . . is Inactive and Can't Work!

"So now that the legislature has enacted legislation requiring the testing of new licensees; how does this effect me? I'm already registered!" Although much discussion has focused on new applicants for a mortgage license, the new legislation will also effect you! **During 2004 every individual holding a mortgage registration** (or, "license" as of 1/1/04), **will also have to take and pass the mortgage exam in order to continue practice as a residential mortgage lender.**

What happens if an individual fails to take and pass the new test? Beginning January 1, 2005 such individuals licenses will all be placed on an "inactive" status. As an inactive licensee you *cannot do anything that requires a mortgage license, ie., for compensation, to make or originate residential mortgage loans, solicit, place or negotiate residential mortgage loans for another, or render services related to the origination, or funding of residential mortgage loan including: telemarketing, underwriting, taking applications, obtaining verifications and appraisals, and communicating with the borrower and lender*). It is as though you were not licensed, except that your license may be once again activated once you provide proof to the Division that you have taken and passed the mortgage exam.

So you say, "What's the rush?" I have all year to complete the exam. Not so! **You will be very unlikely to get a testing spot late in the year.** Yes you do have the entire year to pass the test, however you should be aware and anticipate problems associated with procrastinating your completion of the test. The testing centers have accommodations for ten individuals per session. Due to registration and test taking time (3 hours), only two sessions a day are possible per test center. Although this is not one of the math questions on your exam, a simple calculation indicates that only twenty test takers per testing center, per day can be accommodated. Since we have three testing centers on the Wasatch Front (Midvale, Provo and Ogden) there are a maximum of 60 tests per day that can be taken. If we use the 245 testing days available per year, times 60 testing spaces, that allows just over 14,100 test takers AT MAXIMUM CAPACITY. Given that there are currently over 11,000 currently licensed individual mortgage lenders, that does not allow much room for new mortgage licensees or people who did not pass the test the first time and need to retake it. In addition, the Utah Division of Real Estate also

tests Licensed and Certified Appraisers and real estate sales agents and brokers OUT OF THESE SAME FACILITIES. The message that needs to be conveyed is that wisdom dictates that you should prepare and schedule to take the mortgage lender exam early in 2004. Those who procrastinate their preparations may find delays in making reservations at the testing centers. Those who wait until this time next year would very likely be delayed, and some (perhaps many) may find that they are unable to be tested before the end of the year. In these instances, their mortgage lenders' license would be placed "inactive" until they take and pass the exam and notify the Division.

Remember, on January 1, 2005, those who are currently licensed will be placed on "inactive" status until they pass the residential mortgage lenders' exam. Please avoid any unnecessary delays and inconvenience. **Plan to take the mortgage lenders' exam early in 2004!**

Wearing Multiple "Hats"



As you recall, with the passage of House Bill 277, mortgage licensees who also hold a contractor's, real estate, escrow officer, or appraiser's license, may not use both licenses in the same transaction. The individual or the entity may not act in multiple capacities (as described above) with respect to the same residential mortgage loan transaction.

Therefore both an individual and an entity must choose which capacity they elect to exercise their professional licenses. Different entities have no imposed restrictions.

An example may prove helpful. Tom Brown holds both a mortgage license and a real estate license. Mr. Brown also owns both "ABC Lovely Loans" and "Hotshot Real Estate". Because they are separate entities, they may each provide professional services to the same buyers (as long as Tom Brown does not personally handle both the real estate sale and the residential mortgage loan).

Because this bill takes effect on January 1, 2004 please be advised and act accordingly. The Division will take disciplinary action where circumstances warrant.

Utah Mortgage Lender Exam Procedures

Promissor, a national test administration company, will begin administering the Utah mortgage lender examination in January 2004.

Making an exam reservation

Beginning on Monday, December 15, 2003, Utah mortgage lender license candidates may make a reservation by:

- Calling Promissor Customer Care (toll free) at 1-800-274-7292
- Faxing the Fax Reservation Form (located in Candidate Handbook) to Promissor at (888) 204-6291
- Visiting the Promissor web site (www.promissor.com). Candidates should make a reservation by phone at least three (3) business days before the desired examination date or by fax or on the web at least four (4) business days before the desired examination date. Walk-in examinations are not available.

There are 11,000 mortgage licensees. Take the test early in 2004!

Promissor Assessment Centers

Utah mortgage lender license candidates may test in any one of Promissor's assessment centers that offer PC-testing nationwide. There is no extra fee to test out-of-state.

The following assessment centers are available in Utah and the surrounding states.

Assessment Center Location	Fingerprinting Service
Midvale, UT	Digital
Ogden area, UT	Digital
Provo area, UT	Digital
Cedar City/St. George area, UT	Wet
Grand Junction, CO	Digital
Las Vegas, NV	Digital
Boise, ID	Digital

Please note: Fingerprinting services are only offered to Utah mortgage lender license candidates at the above assessment centers.

Candidates should contact Promissor to confirm specific locations and examination schedules.

Exam Fees

The examination fee (\$75) must be paid at the time of reservation by credit card, debit card, voucher or electronic check. Payment will not be accepted at the assessment center. Examination fees are non-refundable and non-transferable except as detailed in the "Change/Cancel Policy" section of the candidate handbook.

Exam Day

What to bring to the exam

Candidates should bring to the examination:

- two (2) forms of signature identification, one of which MUST be photo-bearing (preferably a driver's license)
- the confirmation number/Promissor ID number they received when they made the examination reservation
- calculators are permitted if they are silent, hand-held, battery-operated, nonprinting, and without an alphabetic key pad. Solar calculators are not recommended because the lighting conditions are often not sufficient to charge the calculator. Use of any other calculator, including "computer-type" calculators, is not permitted. Calculator malfunctions are not grounds for challenging examination results or requesting additional examination time. Promissor does not provide hand-held calculators for the examination.
- failing score report (if the candidate is retaking the examination)

Candidates who do not present the required items will be denied admission to the examination and will forfeit the examination fee.

Exam Procedures

Candidates should report to the Promissor Assessment Center thirty (30) minutes before the examination begins for registration and set-up. Each candidate will have three (3) hours to complete the examination and will leave the assessment center with an official score report in hand.

Fingerprinting Services

Candidates who pass the examination will be fingerprinted at the assessment center at no additional charge. Fingerprinting

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Exam Procedures

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will be either wet or digital, depending on which assessment center the candidate uses. Please refer to the list of assessment centers above in the "Promissor Assessment Centers" section.

Retaking the Exam

The examination is divided into two (2) parts: general and state law. Candidates who pass one section of the examination and fail the other need retake only the failed section within six (6) months. If, after six (6) months, both sections have not been passed, the candidate must retake the entire examination. To retake an examination, candidates should follow regular reservation procedures. Reservations are not made at the assessment center, and candidates must wait 24 hours before making one.

Change/Cancel Policy

Candidates should call Customer Care at 1-800-274-7292 at least four (4) business days before the examination to change or cancel a reservation. Candidates who change or cancel a reservation with proper notice may either transfer their fee to a new reservation or request a refund. Candidates who change or cancel a reservation without proper notice will forfeit the examination fee.

Additional Information

Please visit Promissor's website for additional information relating to the Utah Mortgage Professional examination. A Candidate Handbook will be posted to the website in December 2003.

OR

Contact Promissor's Customer Care staff (beginning on Monday, December 15, 2003) at 1-800-274-7292 to request a Candidate Handbook.



Mortgage Registration Disciplinary Sanctions

FARNSWORTH, JESS, Owner of Mortgage Executives, Toquerville, Utah. Agreed to a 60 day suspension of his individual registration effective May 7, 2003 and that he will pay a \$1,500 fine because his unregistered assistant created a false verification of deposit and forged the name of the depository representative on it. Mr. Farnsworth maintains that in mitigation the loan is still performing and that he terminated his assistant when he found out what she had done. During the Division's investigation, Mr. Farnsworth identified the assistant as "Carrie Shaw." The Division learned that "Carrie Shaw" was really Mr. Farnsworth's daughter, Carrie Farnsworth Cook. #MG03-02-04.

MAURER, BARON, Formerly the Control Person for The Lending Company, Salt Lake City. Agreed to pay a \$500 fine for violating the Utah Residential Mortgage Practices Act by failing to require the other six individuals who worked for The Lending Company to promptly register with the Division and by failing to notify the Division when he left The Lending Company and moved to Hawaii. Maurer maintained that in mitigation he was the Control Person in name only and that he was not allowed to have any actual control over the company or over the employees and their actions. #MG01-11-22.

MOLINA, CARLOS M. "MICHAEL," formerly Control Person for Beacon Hill Mortgage, Murray. Agreed to pay a \$1,500 fine for: 1) Changing the name under which Utah residential mortgage business was conducted from Beacon Hill Mortgage to Pryme Investment & Mortgage Brokers without changing the name with the Division; 2) Failing to disclose to the Division that the Idaho Department of Finance revoked the registration of Pryme Investment & Mortgage Brokers dba Beacon Hill Mortgage; and 3) Beacon Hill/Pryme having participated in a transaction in 1999 involving misrepresentation on a loan application. Mr. Molina's individual registration was renewed as part of the foregoing settlement, the registration of Beacon Hill Mortgage has expired, and the application for registration of Pryme Investment & Mortgage Brokers has been withdrawn. #MG02-05-34.

Appraiser Disciplinary Sanctions



ADAMS, J. MICHAEL, State-Certified Residential Appraiser, Orem. Surrendered his appraiser certification effective Sept. 24, 2003, with a State License to be issued in its place. Mr. Adams also agreed that for two years he will not supervise or sign for or any other appraiser or for any person earning points for licensure or certification. In one case, Mr. Adams appraised a home constructed by Salisbury Development at \$132,000 and did not analyze the current \$110,200 contract of sale on the property. The comparables used were between 29 and 54 blocks away although numerous comparables were available in the same subdivision. In another case, Mr. Adams appraised a Salisbury Development home at \$137,000 that buyers had contracted to purchase at \$108,200. The comparables used were between 26 and 33 blocks away although numerous comparables were available in the same subdivision, including a home that Mr. Adams had just himself purchased for \$108,000. In a third case, Mr. Adams indicated on an appraisal report done for a buyer's purchase money loan that it was for a refinance. #AP98-06-07, 99-06-18, 20-03-01, 01-05-14, 01-08-07, 01-08-08, 01-08-54, 01-08-55, 01-10-23.

BODELL, J. MARTELL, SR., State-Certified Residential Appraiser, Salt Lake City. Agreed to pay a \$2,500 fine, and that he will not supervise train, or sign for any Licensed Appraiser, trainee, or unclassified person earning points for licensure for at least one year from June 25, 2003, but he will be permitted to supervise

certified appraisers and to sign reports with other certified appraisers. Mr. Bodell admitted USPAP violations by generating only the second page of a URAR form and signing it in conjunction with a tax appeal on property in which he had a partial interest, and by failing to adequately supervise a junior appraiser who either did not show or did not analyze sales and listing history in his reports, and who did not properly treat seller concessions in his reports. #AP01-12-01, 02-04-15, 02-05-16, 02-07-12.

CAMPBELL, TROY A., State-Certified Residential Appraiser, Draper. Agreed to pay a \$500 fine and complete a USPAP course for violation of USPAP Standards Rule 2-5, which provided that an appraiser who signs a report prepared by another accepts full responsibility for the appraisal and the contents of the appraisal report. Although Mr. Campbell's office had Multiple Listing Service access to sales similar to the subject property, the sales comparables used by the registered appraiser who prepared the report were outside of the neighborhood defined in the report. Mr. Campbell maintained that in mitigation, he released the registered appraiser from his employment because of issues related to the appraisal in this case. #AP20-11-14.

CARLSEN, PAUL KENT, State-Certified Residential Appraiser, Logan. Agreed to pay a \$2,500 fine, complete remedial education, and have his certification placed on probation for two years from June 25, 2003 because of the following errors and USPAP violations in a number of different appraisal reports: erring in the determination of the highest and best use of property that would be landlocked by a proposed subdivision, failing to make it clear in an appraisal of a lot that the appraisal was subject to a home being moved to the lot, making inconsistent adjustments in an appraisal report or failing to make adjustments, failing to maintain documentation in the work file to support the cost approach in an appraisal report, and making numerous errors in a report that in the aggregate made it misleading. Mr. Carlsen also agreed that for two years from June 25, 2003, he will not supervise or sign for any other appraiser, appraiser trainee, or unclassified appraiser. #AP20-09-09, 20-03-18, 01-02-10, 95-11-04, 96-03-01, 98-06-25, 01-03-29, 98-09-05, 02-01-09.

CARROLL, HOWARD R., State-Certified General Appraiser, Vernal. Agreed to surrender his State-Certified General Certificate status effective June 28, 2003 and be issued a State-Certified Residential certificate in its place, that the State-Certified Residential certificate shall be on probationary status for two years, that he shall not supervise or sign for any other appraiser, trainee or unclassified person for two years, that he will pay a \$2,500 fine, and that he will complete a USPAP course. Mr. Carroll admitted that he violated USPAP in three appraisals by failing to employ recognized methods and techniques, but maintained that the violations were not intentional and were a result of not having adequate experience in appraising farm property. #AP93-04-04, 94-06-05, 95-06-09.

CARTER, MIKE L., State-Certified Residential Appraiser, South Jordan. Because of USPAP violations in three appraisals, Mr. Carter agreed to pay fines totaling \$2,500 and to complete a USPAP course. In one appraisal, the Division alleged that Mr. Carter chose comparables in superior locations. Mr. Carter disputed that, but admitted violation of USPAP Standards Rule 1-1. In the second appraisal, Mr. Carter signed in a supervisory capacity on an appraisal that reported that the subject sold for more than it did. In the third appraisal, the Division alleged, among other things, that all of the comparables were from a superior area. Mr. Carter denied any intent to mislead but admitted that he violated USPAP in that appraisal report by failing to adequately supervise the registered appraiser who completed the report. #AP99-05-09, 01-12-31, 02-05-15.

CHRISTENSEN, J. STEWART, State-Certified Residential Appraiser, Ogden. Application for renewal of certification surrendered effective June 25, 2003. Mr. Christensen agreed that for at least two years thereafter he will not own or manage a company that appraises in Utah, and that he will not work for a Utah appraiser as a trainee, as an unclassified individual earning points for licensure or certification, as clerical support staff, or in any other capacity. He also agreed that he will not apply for a new appraiser license for at least two years. #AP75-02-09, 99-08-18, 01-04-01, 01-04-20, 01-08-41, 01-11-10.

CLOWARD, JOSEPH D., State-Certified

General Appraiser, Eagle Mountain. Agreed to pay a \$500.00 fine and take a USPAP course for signing a registered appraiser's report that violated USPAP and that had a final value that was not supported by the data in the workfile. Mr. Cloward admitted that during the three-month period during which he signed appraisals for the then-registered appraiser, he was at times rushed and did not always adequately supervise the registered appraiser. Mr. Cloward maintains that he terminated the association because he did not have adequate time to train or supervise the registered appraiser, and that he has not signed for any other appraiser either before or since that time. #AP20-08-19.

HAMPTON, JEFF A., State-Certified Residential Appraiser, Orem. Agreed to pay a \$500 fine and complete a USPAP course for USPAP violations in an appraisal in which he acted as the supervisory appraiser. The appraisal report contained a number of errors and used comparables that were farther away from the subject and in neighborhoods superior to the subject than more appropriate comparables that were available. #AP20-20-03.

HANSEN, PHILIP L., State-Certified Residential Appraiser, Las Vegas, Nevada. Surrendered his appraiser certification effective Sept. 24, 2003, with a State License to be issued in its place. Mr. Hansen also agreed that for two years he will not supervise or sign for any other appraiser or for any person earning points for licensure or certification. In one case, Mr. Hansen's comparable 1 was identified as a split level home when in fact the property at that address was a 12-plex. There was no house but only a vacant lot at the address of Comparable 2. Mr. Hansen maintains that in mitigation the errors were typographical errors. The report also did not disclose that the subject property was being used as a junk yard. In the second case, Mr. Hansen did a November, 2002 "as is" appraisal of property identified as new construction when in fact there was no home on the lot and a 1993 manufactured home was to be moved to the site. #AP98-01-23, 03-02-06.

HARWARD, JUD., State-Certified General Appraiser, Springville. Agreed to pay a \$1,500 fine in one case in which he admitted that his appraisal of the Lee

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Appraiser Sanctions

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Lemmon property in Huntington did not fully comply with USPAP and agreed to have a correction letter placed in his file in another case warning him that an appraiser must comply with USPAP regardless of any client instruction to the contrary. Mr. Harward maintained in the second case that he understood that he had been instructed by the court that he was not to comply with USPAP in a court-ordered appraisal. #AP98-01-01, 99-03-11, 99-11-17.

HOLDAWAY, ANITA LOUISE, State-Certified Residential Appraiser, Provo. Agreed to pay a \$500 fine, complete a 2003 USPAP course, and that she will not supervise or sign for any other appraisers, trainees or unclassified persons for two years because of a report she signed for a registered appraiser that violated USPAP Standards Rule 1-1(a) in that inappropriate methods were used. The complaint filed with the Division alleged that the value of the subject property was overstated and that there were a number of USPAP violations in the report. Ms. Holdaway maintains that in mitigation the report seemed reasonable based on information presented to her. #AP99-10-13.

JORGENSEN, ROBERT C., State-Certified Residential Appraiser, West Jordan. Agreed to pay a \$1,500 fine for USPAP violations in: 1) a 1998 appraisal report that contained an unusually high site value, improperly performed cost analysis, and distant comparable sales although closer and more similar comparables were available; and 2) two 2000 appraisal reports for the same borrower on two different properties in which the complaining party alleged that he failed to consider the current listing price of the properties. Mr. Jorgensen maintains that in mitigation he did not recognize the difference between the subject and the comparable neighborhoods in the 1998 report because of inexperience, and in the 2000 appraisals he was shown REPC's that supported a sales price in excess of the listing price in each instance. #AP99-07-12, 02-07-16.

MADSEN, ERIC J., State-Certified Residential Appraiser, Sandy. Agreed to pay a \$2,500 fine and complete a class on appraising small residential income properties for violating USPAP in three appraisals. In one case, Mr. Madsen appraised a property in October 2001 that he had appraised in March 2001. He failed to analyze a prior sale of the property that had occurred in the year preceding the appraisal and failed to keep in his work file documentation of comparable land value or documentation of the additions to the property since the time of the first appraisal. In the second case, he failed to analyze a previous sale of the subject property in his report. In the third case, a series of errors were made that, although individually might not significantly affect the results of the appraisal, in the aggregate affected the credibility of the results. #AP02-01-17, 01-12-02, 01-08-05.

MILLER, CHARLES G., State-Certified Residential Appraiser, St. George. Agreed to surrender his State-Certified Residential status effective May 28, 2003 and be issued a State License in its place, that he would not apply for a new certification for at least two years, that he will pay a fine of \$3,500, that he will take a USPAP course and a course on appraising manufactured housing, and that he will not appraise manufactured homes until he has taken the manufactured housing course. Mr. Miller violated USPAP in four appraisals of

property owned by the same owner by failing to collect his own data and using the data supplied by that owner instead. The data supplied by the owner resulted in appraisals that were above the sales prices of the properties appraised. In a fifth appraisal, Mr. Miller violated USPAP by failing to show sales history in the appraisal report, among other things. #AP02-05-10, 03-02-16, 03-03-11, 03-03-12, 03-03-13.

PREISLER, JARED L., State-Certified Residential Appraiser, Roy. Agreed to pay a \$3,000 fine and complete a USPAP course for failing to analyze the current listings of the subject properties and failing to correctly employ those recognized methods and techniques necessary to produce a credible appraisal in two appraisals involving the same real estate agent and the same mortgage company. Mr. Preisler maintained that he was intentionally misled by the sales agent and the mortgage company when they provided him with comparable sales data to use in his appraisal reports and with a contract of sale that, unknown to him at the time, was inflated in order to facilitate a flipping scheme. #AP02-08-11, 02-10-02.

RASMUSSEN, DEBRA L., State-Certified Residential Appraiser, Sandy. Agreed to pay a \$1,000 fine for violating USPAP by failing to analyze such comparable sales data as was available, and by failing to maintain sufficient information in her work file to support her opinions and conclusions. The complaint alleged that the appraisals complained about were inflated, used comparables outside of the neighborhood boundary and used dissimilar comparables although numerous similar comparables were available. Ms. Rasmussen maintains that in mitigation this is the only complaint that has been filed with the Division against her and that she took the USPAP course after the time of the appraisals at issue in this case. #AP02-07-10.

STAPLEY, MICHAEL D., State-Certified Residential Appraiser, West Jordan. Because of violation of USPAP Standards Rule 1-1(a) and Standard 2, agreed to pay a \$1,000 fine and that he will not appraise any property that requires an income capitalization approach until after he has successfully completed a course in income capitalization. The Division received a complaint that Mr. Stapley had omitted reference to a single family home when he appraised a property that included a fourplex and a single family home in order to fit the requirements for a typical 2-4 unit residential loan. Mr. Stapley maintains that in mitigation the seller of the home stated that the home was not rented and was being used as a storage unit by the seller, and it therefore did not add value to the property. He also maintains that in mitigation he originally had included the home in the appraisal report, but the lender instructed him to remove the fifth unit from the appraisal. #AP02-08-06.

WARBURTON, BRUCE L., State-Certified Residential Appraiser, Layton. Surrendered his rights in connection with his pending application for renewal rather than continue to respond to the Division's investigation of complaints, resulting in his no longer being a State-Certified Appraiser as of March 26, 2003. #AP20-01-06, 20-01-20, 20-02-28, 20-04-06, 20-08-07, 01-08-52, 01-10-02, 01-11-23, 02-11-24, 01-12-25, 02-03-05, 02-04-18, 02-05-09, 02-08-09, 02-11-06.

WESTRA, KYLE S., State-Certified Residential Appraiser, South Jordan. Agreed to pay a \$500 fine and complete a USPAP class for violating Standards Rule 1-1(b) by relying on information about a home that came from a contractor without more thoroughly investigating the property. The complaint alleged that the comparables were far superior in design and construction than the subject property. Mr. Westra maintained that in mitigation the complainant did not inspect the interior of the home and therefore did not realize that the interior had been renovated to remove the functional obsolescence that is generally present in an older home, that he had no intent to push value, and that his appraisal in fact "killed the deal" when it did not come in high enough. #AP99-03-15.



Real Estate Disciplinary Sanctions

ALEXANDER, CONNIE G., Inactive Sales Agent, Tooele. Agreed to complete remedial education before activating her license and that her license will be on probationary status for two years once it is activated, for violation of Administrative Rule R162-6.2.1.4 on Standard Supplementary Clauses. Acting as seller's agent, Ms. Alexander wrote a counter offer that included the language, "Seller requests 72 hour right of refusal" instead of using the Standard Supplementary Clause named "Option to Keep House on Market" approved by the Real Estate Commission. Ms. Alexander thought that by referring to a "72 hour right of refusal," it was a shorthand way to incorporate the language of the Standard Supplementary Clause into her contract. When a second buyer became interested in the property, and the first buyer refused to comply with the language of the Standard Supplementary Clause, Ms. Alexander advised the sellers they could cancel the contract with the first buyer and sell to the second buyer, which they did. Complicated and protracted litigation resulted. #RE98-10-28.

CHARLES Q. GREENWOOD and GREENWOOD PROPERTY MANAGEMENT, Unlicensed, Layton, Utah. Cease and Desist Order issued August 27, 2003 prohibiting acting as a property manager for compensation until such time as they become properly licensed with the Division. #RE03-07-11.

CHRISTENSEN, JOSHUA aka JOSH, Inactive Sales Agent, North Salt Lake. License revoked by default on July 16, 2003 because of being unworthy or incompetent to act as a sales agent in such manner as to protect the public and because of conviction of a criminal offense involving moral turpitude. Mr. Christensen was convicted of Possession of Methylenedioxymethamphetamine ("Ecstasy") with Intent to Distribute and is currently serving a 64 month prison term. #RE02-04-22.

EVES, JOYLENE K. and PAUL G. EVES, Orem, and WILLIAM D. TOOKE and HIDDEN VALE MANAGEMENT, INC., Provo. Cease and Desist Order issued August 13, 2003, prohibiting the Eves from: holding themselves out as engaged in real estate sales activity or property management activity that requires a license; from participating in property management that requires a license other than as "support services personnel"; accounting for and disbursing rents collected for others; authorizing expenditures for repairs to others' real estate; or owning or managing a property

management company. The order prohibits Mr. Tooke and Hidden Vale Management, Inc. from allowing the Eves to manage Hidden Vale Management, Inc. or to act on behalf of Hidden Vale Management, Inc. in any capacity that requires a Utah real estate license. At the time of publication, Joy and Paul Eves had requested a hearing on the Cease and Desist Order but no hearing had yet been held. #RE03-07-23.

FLANNIGAN, NANCY V., Principal Broker, Metro Realty, Salt Lake City. Agreed to pay a \$500 fine and complete the Division Trust Account Seminar because of violation of Rule R162-4.2.7, which requires a written release to disburse funds if there is no contract language authorizing disbursement. Ms. Flannigan wrote up a new offer for her buyers that carried forward the seller disclosure deadline and the evaluations and inspections deadline from a previous offer. Realizing that those dates were no longer practical, Ms. Flannigan intended to extend them by adding, "Seller will work with buyer on home inspection scheduling and report to buyer with three days review time." After the transaction failed, the buyers claimed that they could cancel the contract based on that language, and the sellers claimed that the buyers had defaulted by not doing their inspection by the deadline. Ms. Flannigan, acting in the belief that the buyers had legally cancelled the contract, transferred their earnest money deposit to a new offer with a different seller. #RE20-07-12.

GALE, MARTIN J., Associate Broker, formerly with Century 21 Preferred Realty in Salt Lake City. Agreed to pay a \$1,000 fine and complete the Division of Real Estate Trust Account Seminar and a course in real estate broker and agent ethics for violating U.C.A. §61-2-10(1). The Division alleged, but Mr. Gale did not necessarily agree, that after Mr. Gale and his former business associate and principal broker decided to part company, the principal broker removed Mr. Gale as a signatory on the brokerage trust account, but not on the operating account, and Mr. Gale caused funds to be transferred from the trust account to the operating account and withdrew them. Mr. Gale maintains, but the Division does not necessarily agree, that he was owed the funds as commissions and that his former principal broker was unreasonably withholding the funds from him. #RE97-04-10.

GOON, MICHELLE R., Sales Agent, formerly with Wardley GMAC Real Estate, Layton. Agreed to pay a \$400 fine because of breaching a fiduciary duty owed by a licensee to a principal in a real estate transaction. Ms. Goon represented both buyers and sellers in a transaction and did not disclose to the sellers that the buyers' earnest money check had bounced although she was diligent in obtaining a replacement check. When the settlement deadline passed, the parties were agreeable to an extension until April 15, 2000, but no extension was filled out. When April 15, 2000 had passed, the sellers declared the buyers in default. The buyers complained to the Division, alleging that they thought they were still within the time they had to obtain financing when the sellers terminated the transaction. #RE20-05-28.

GUNNELL, BRANDON, Sales Agent, Ulrich Realtors, Salt Lake City. Agreed to pay a \$500 fine and complete an ethics course for violation of U.C.A. §61-2-11(8). At the time that Mr. Gunnell purchased the property involved in the complaint, there had been a question about access to the property. He later learned that there

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Real Estate Sanctions

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was a recorded right of way for access to the parcel. Two years later, he sold the property. A neighboring property owner thereafter blocked the access of Mr. Gunnell's buyers to their property by piling a hill of dirt on the right of way. Mr. Gunnell's buyers subsequently discovered that he had not disclosed to them everything that the parties from whom he purchased had disclosed to him. Mr. Gunnell maintained that in mitigation, the adjacent property owner never took steps to block his access and he did not think there would be any problems with his buyers obtaining access to the property. #RE02-12-22.

HAWKES, SHERMAN B., Principal Broker, Hawkes and Company, Bountiful. Effective November 19, 2003, Mr. Hawkes was fined \$1,000 and had his license placed on probation for two years, during which time he may not provide property management services for any real property that is owned by anyone other than himself, his immediate family, or a family trust owned by his immediate family of which he is the trustee. During that same period, he may not have any sales agents or associate brokers licensed with him engage in property management for others. Mr. Hawkes failed to exercise reasonable supervision over former real estate sales agent Douglas Reynolds when Mr. Hawkes agreed to act as the principal broker for Harbor Place Management Realty, Inc. Mr. Hawkes had declared in writing to the Division that he was aware of restrictions that had been placed on Mr. Reynolds' probationary license and that he would agree to comply with those requirements, including a requirement that Mr. Reynolds could only sign on a trust account if two signatories were required. In some instance, Mr. Hawkes signed as the second signatory on trust account checks after they had been issued by Reynolds and had already cleared the bank. #RE20-03-17

KARL F. KOENIG, Sales Agent, Bountiful. License revoked, with the revocation stayed, and his license suspended for one year instead, based on conviction of a criminal offense involving moral turpitude, misrepresenting an earlier criminal conviction on license applications, and failing to report criminal offenses to the Division. Mr. Koenig entered a guilty plea in abeyance in Sept. 1998 to a charge of Battery, and was on criminal probation until March, 2000. He did not report the plea on his October, 1998 renewal, nor did he report on his October, 2000 renewal the fact that he had been on probation during the preceding two years. In July, 2001, Mr. Koenig was convicted of misdemeanor animal nuisance charges in two separate cases and did not report either conviction to the Division. In January 2002, Mr. Koenig was convicted of Class A Misdemeanor Attempted Exploiting a Prostitute. Mr. Koenig's license will be suspended from August 23, 2003 to August 23, 2004, during which time he is to complete an ethics course. Following the suspension, his license will be on probationary status for one year, subject to the conditions that he shall provide a copy of the Order in the licensing proceeding to any broker with whom he affiliates, and that he shall pay a \$1,000.00 fine at the conclusion of the license probation. Mr. Koenig requested agency review by the Commerce Department and was granted a conditional stay of the suspension on 10/6/03, which requires that he must be supervised by his principal broker in each and every transaction, including the principal broker's review

of every offer, counter offer and ultimate contract. The stay is effective until a further order is entered at the conclusion of agency review proceedings. #RE02-04-21.

LARSEN, ALTON R., JR., Principal Broker, formerly principal broker of Homefinders Realtors in Salt Lake City. For violation of Utah Code 61-2-11(8) by failing to maintain his trust account and accounting records, Mr. Larsen agreed: 1) to surrender his broker license effective August 20, 2003 and be issued a sales license in its place; 2) that he will not apply for a new broker license for at least three years; 3) that he will not own or operate an active Utah real estate brokerage for at least three years; and 4) that for at least three years he will not use the sales agent license issued to him to work for a licensed principal broker in any capacity that would require him to be responsible for, or assist in, maintaining brokerage accounting records or the brokerage real estate trust account. A June, 2000 Division audit of Mr. Larsen's brokerage determined that, although Mr. Larsen's trust liability was at least \$25,000 in August, 1997, the amount on deposit in his trust account at that time was \$22,243.33, and that the balance in the trust account was not brought back up above \$25,000 until August, 1998. Among other things, the audit also determined that \$656.38 of the funds that were diverted between August, 1997 and August 1998 involved nine checks written by Mr. Larsen's wife for personal expenses. In October 2000, the bank at which the account was maintained took responsibility for the checks written by Mr. Larsen's wife since she was not authorized to sign on the account and reimbursed \$656.38 to the brokerage. #RE01-06-11, RE35-00-09.

LYONS, BONNIE, Sales Agent, formerly with Wardley GMAC, Layton office. Agreed to pay a \$500 fine and complete an ethics class for breaching a fiduciary duty to a principal in violation of U.C.A. §61-2-11(16). Ms. Lyons agreed to contribute a portion of her commission to a transaction to make the transaction work, but then did not make the contribution. Ms. Lyons maintained that in mitigation, she was unable to pay because her assistant took the funds and left the State of Utah and because she herself was involved in a serious traffic accident. #RE03-01-04.

MCENTIRE, DONALD R., Principal Broker, McEntire Real Estate, formerly of Utah, now located in Kihei, Hawaii. Agreed to pay a \$500 fine and complete the Division of Real Estate Trust Account Seminar for violating the rule that requires earnest money to be deposited upon acceptance of offer and the rule that requires all transactions to be assigned a separate transaction number. Three days after acceptance of an offer, the buyers attempted to cancel the contract. Mr. McEntire held the earnest money check undeposited. Two weeks later, the buyers authorized him to release the earnest money to the sellers. He endorsed the earnest money check over to the sellers, but when the sellers tried to negotiate the check, payment was refused due to insufficient funds. #RE20-06-09.

NAGLE, SCOTT G., Sales Agent, American General Real Estate, Salt Lake City. Agreed to pay a \$200 fine because of violation of Rule R162-6.1.5.8 by advertising a property without the written consent of the owner or the listing broker. Mr. Nagle ran a newspaper ad for a home that was listed with another brokerage

continued on back page

Bush Administration Provides Homebuyers New Protection from Predatory Lending Practice

New "Anti-Flipping" Rule Holds Lenders, Sellers, and Appraisers Accountable

HUD. WASHINGTON - Housing and Urban Development Secretary Mel Martinez announced a new initiative in the Bush Administration's efforts to crack down on predatory lending. HUD published a final rule on the Federal Register addressing property "flipping" on mortgages insured by the Federal Housing Administration (FHA).

Property "flipping" occurs when a recently acquired property is resold for a considerable profit with an artificially inflated value.

"The Bush Administration is committed to maintaining a strong housing market in which consumers can feel confident that they are protected from unscrupulous practices," Martinez said. "This final rule represents a major step in our efforts to eliminate predatory lending practices."

Predatory lending results when home purchasers become unwitting victims of lenders, sellers, and appraisers, often working together. The unsuspecting homebuyers either purchase homes with sales prices far in excess of the fair market value, or are substantially overcharged with costs associated with obtaining a mortgage.

The final rule, **"FR-4615 Prohibition of Property Flipping in HUD's**

Single Family Mortgage Insurance Programs," makes recently flipped properties ineligible for FHA mortgage insurance. It also allows FHA to better manage its insurance risk by requiring additional support for a property's value when a significant value increase occurs between sales. Features of the new rule include:

SALE BY OWNER OF RECORD:

- Only the owner of record may sell a home to an individual who will obtain FHA mortgage insurance for the loan; it may not involve any sale or assignment of the sales contract, a procedure often observed when the homebuyer is determined to have been a victim of predatory practices.

TIME RESTRICTIONS ON RE-SALES:

- Re-sales occurring 90 days or less following acquisition will not be eligible for a mortgage to be insured by FHA. FHA's analysis disclosed that among the most egregious examples of predatory lending were "flips" that occurred within a very brief time span, often within days. Thus, the "quick flips" will be eliminated.



- Re-sales occurring between 91 and 180 days will be eligible provided that the lender obtains an additional appraisal from an independent appraiser based on a re-sale percentage threshold established by FHA; this threshold would be relatively high so as to not adversely affect legitimate rehabilitation efforts, while still deterring unscrupulous sellers, lenders, and appraisers from attempting to flip properties and defraud homebuyers. Lenders may also prove that the increased value is the result of rehabilitation of the property.

- In locations where HUD identifies property flipping as a problem, re-sales occurring between 90 days and one year will be subject to a requirement that the lender obtain additional documentation to support the value. This authority would supersede the higher expected threshold established for the above-mentioned 90 to 180 day period and will be invoked when FHA determines that substantial abuse may be occurring in a particular locality.

Other recent actions by the Bush Administration to protect homeowners from predatory lending and promote homeownership include:

- A proposed rule making lenders accountable for appraisals on

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New “Anti-Flipping” Rule

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mortgages insured by FHA.

- A recent plan announced by HUD to expand protection of homeowners by proposing performance standards for appraisers of FHA-single family homes under its Appraiser Watch Initiative. Under Appraiser Watch, some 25,000 appraisers will be held accountable for faulty appraisals, which too often lead to default and foreclosure. FHA will monitor appraisers' default and claim rates and will levy sanctions - including removal from its list of approved appraisers - against those who violate FHA standards.
- A proposal to reform the regulatory requirements of the Real Estate Settlement Procedures Act (RESPA) that would make the process of buying and refinancing a home significantly simpler, potentially less expensive and would protect consumers from unscrupulous lending practices.
- The “Homebuyer Bill of Rights,” which requires greater disclosure of costs associated with buying a home, allows consumers more choices in choosing providers of closing services, limits excessive settlement fees and encourages innovation and competition in the marketplace.

HUD is the nation's housing agency committed to increasing homeownership, particularly among minorities, and creating affordable housing opportunities for low-income Americans. More information about HUD and its programs is available at www.hud.org.

Just a Reminder...

All mortgage lenders should be aware that House Bill 277 goes into effect January 1, 2004. Please make yourself familiar with the significant changes this Bill makes to the Utah Residential Mortgage Practices Act. You can access the Bill, as well as the current statute and rules on the Division of Real Estate website: www.commerce.utah.gov/dre. Follow the links under “About Us” from the home page.

Fraud in Perspective

The following information was gathered by Jay Bienkowski, Supervisory Special Agent, FBI - Portland Division. It is reprinted with his permission.

Common misrepresentations in mortgage loan fraud:

Income and Employment

- Income is overstated
- Employment history is fabricated
- Forged W-2s, tax returns, CPA letters, pay stubs
- Employment is “verified” by co-conspirators

Occupancy

- Borrower intends to use property for rental income
- Borrower is purchasing property for another party
- Appraisals almost always list the property as owner-occupied

Assets and Collateral

- Assets are overstated
- Collateral is overstated
- Collateral is nonexistent (forged promissory notes and Land Contracts)
- Collateral is stolen or counterfeit (fraudulent money orders)

Debt and Credit

- Borrower's debts are not fully disclosed
- Liens concealed
- Borrower's credit history is not fully disclosed or is altered
- Borrower assumes the SSN of another person

Down Payment

- Down payment does not exist
- Down payment is concealed in a non-existent Land Contract
- Down payment is borrowed and disguised with a fraudulent gift letter

Property Value

- Property value is inflated to increase the sales value to make up for no down payment
- Property value is inflated to generate cash proceeds in fraud for profit



Our Nobel Prize

The Lighter Side of Lending

by Gordon Schlicke

How come we never seen any Nobel Prize winners for mortgage lenders? This annual award, given to those who had most benefitted humankind in physics, chemistry, medicine, literature and peace, makes no mention of our high calling. Without lenders none of the winners would be able to practice their discipline. Furthermore, I checked: Every one of last year's Nobel Prize winners had a mortgage. Pretty convincing.

As a public service, I contacted the people that stamp-out these medals at the Nobel Factory. "You are not including the unsung heroes of mortgage lending who put aside their personal belief in morality to help people put a roof over their head," I said. In this politically correct world it's not wise to *dis* lenders. "Perhaps you'd like to write-up a proposal," they suggested. All right, here's my proposal.

The Prize Committee should add a special category, the "The Mortgage Lender Who Mathematically Proves The Federal Reserve Calculation for Annual Percentage Rate is Wrong." This will serve humankind by saving two thirds of our national forests and reverse global warming.

Nobel Prize winners put in tons of research and lenders are the reason. They work long hours because they have a big mortgage payment every month. All these important things wouldn't have been discovered if some loan originator hadn't saddled a borrower with a debt bigger than he could handle.

Lenders have an interest in every Nobel category. Think about what we could contribute to world peace. Most wars are about who owns the land. If world leaders would just contact the nearest lender, we'd put them in touch with a good title company who would tell them where to draw the lines. For an additional fee, they might even insure world peace provided it doesn't appear on Schedule B.

Most people are unaware that in the world of literature, mortgage lending is preeminent.



Believe it or not, a Pulitzer Prize in Journalism was almost awarded to the writers of the FNMA Guidelines. But Mrs. Spitzer's third grade class in Yonkers beat them out. It was a clarity issue.

The world of medicine has even given awards to mortgage lenders. The National Association of Ulcer Doctors gave our association an award for "The industry that contributes most to causing ulcerative colitis thereby allowing us to cover our office overhead." You should have seen the trophy.

If you think our world never touches the world of chemistry you'd be wrong. Environmentally conscious Kreplach Mortgage Company was first to introduce loan documents printed on bran paper with Soy ink. When you borrow from Kreplach you can eat your mortgage but the facilities should be near. And no animals are ever killed making a Kreplach loan.

Any good physics text will acknowledge that it was mortgage lenders who discovered that the energy needed to make monthly payments depends on how big those payments are. And we contributed this famous law of physics: *A fixed payment you are comfortable with will increase in direct proportion to any increase in income.*

You might be surprised to learn that the Nobel Prize Committee works out of a Post Office Box in Switzerland. Not a good sign. And it only meets twice a year to consider who gets the coveted award. "Could you send in any spare tin-foil with your suggestion?" they said. "We need it for the medals."

Reprinted with permission from the June 2003 Scotsman Guide. Gordon Schlicke is a mortgage trainer in Seattle, Washington and can be reached at Gschlicke@aol.com.

Appraisals: Responsibility of Lenders

Lenders would be held accountable for the quality of appraisals backing FHA-insured single-family mortgages under proposed regulations issued by HUD, and they could face administrative sanctions if appraisals fail to meet FHA requirements. The regulations were published for comment in the January 13th issue of the Federal Register.

The rules would apply to both sponsor lenders, who underwrite loans, and loan correspondents, who originate loans on behalf of their sponsors.

Need for Regulation

While Most FHA appraisals meet agency standards, HUD said the new rules are intended to deal with situations in which lenders pressure appraisers to match the sales price in order to insure that a loan goes through. In addition, the rules are aimed at fraudulent activity, such as “flipping,” in which appraisals support inflated prices as properties are rapidly turned over.

The proposed rules would explicitly include the submission of a faulty appraisal in the list of actions subject to sanctions by the Mortgage Review Board. They would also codify HUD’s policy that lenders must ensure that appraisals satisfy FHA requirements and that lenders are equally responsible with appraisers for the quality of appraisals. The rules also would reemphasize the requirement for a lender to select an appraiser listed on the FHA Appraiser Roster.

Ensuring Compliance

HUD noted that lenders have a variety of tools to ensure that appraisals meet FHA requirements, including reviewing appraisal documentation, performing quality assurance reviews, using an automated valuation model (AVM) to determine the reasonableness of an appraised value, and limiting their business to appraisers who carry errors and omissions (E&O) insurance.

“The purpose of the proposed rule is not to mandate that lenders must follow a specific course of action to ensure compliance with FHA appraisal requirements,” HUD explained. “Each lender has the discretion to choose the means by which it will ensure such compliance.” While inviting comments on all aspects of the proposed regulations, HUD said it is particularly interested in comments regarding possible unintended adverse consequences on the majority of lenders and appraisers who comply with FHA requirements.

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Truth-In-Brokering

by Gary Opper,
Approved Financial Corp., Weston, FL

Most mortgage transactions are governed by truth-in-lending. The truth-in-lending laws, and other related laws, were enacted many years ago. They were updated, over time, to attempt to protect the consumer from unscrupulous mortgage brokers and lenders. These laws have evolved into very difficult and obtuse laws. Secretary of HUD, Mel Martinez, stated that he bought a home and said, “You should not have to be a lawyer and the Secretary of HUD to figure out this process!” While this process of finding a new home can be confusing, frustrating and tiring to a borrower, the whole process could be made more pleasant with your commitment to truth-in-brokering.

If all brokers adopted a truth-in-brokering position, at least it would level the playing field and consumers would not feel at a disadvantage. Former National Association of Mortgage Brokers President Joe Falk stated, “I prefer that everyone participating in the home mortgage process tell the truth from the beginning. It would make everything so much easier for everyone.” I believe that if everyone adopted the three-point plan outlined below as their truth-in-brokering plan, all mortgage brokers would become mortgage professionals.

Deal Fairly With Borrowers

You cannot disclose enough to your borrower. You should have full disclosure. Period. You should over-disclose to your borrower. You should disclose over and over again to your borrower, so there is no mistake that

your borrower understands and has heard you correctly regarding all the terms and conditions of the loan. The borrower should repeat the terms back to you. When you provide documents to your borrower to sign, there should be no empty blanks. All the blanks should be filled in before the borrower signs any disclosure, estimate or application. Explain to your borrowers until they complain.

Deal Fairly With Professionals

Let the professionals involved in the transaction do their job. Start with the appraiser. Give the appraiser the address of the property and nothing more. Do not influence the appraiser to “push the value.” Do not influence the appraiser by giving him a number to shoot for. Appraisers are in the business of appraising property and not “hitting a number.” When a mortgage broker unduly influences an appraiser, in addition to the fraud that might be perpetrated, the borrower may be over-paying for a property, the lender may be over-lending on the property and the borrower may be over-mortgaging the property and therefore putting the loan in jeopardy.

Your account rep is there to smooth over your relationship and shepherd your loan through his company. He is not there to give you pointers on how to beat the system. Don't put your account rep in the position of choosing his commission and your business over the interest of the lender and borrower.

Let the title company do its job. Do not try to influence the title company to overlook liens or judgments or other possible defects in the title. Make sure the title is clean. The problem with quick and dirty title work is that at a future date, when a sale or refinance is contemplated, the new lender's title company or

the buyer's title company may not accept the poor work that may have been performed earlier. Don't attempt to influence your title company to overlook breaks in the chain of title or other possible clouds on the title. You will be doing a disservice to your client when he attempts to do any transaction in the future. It is better to solve the problem today than to solve the problem five or ten years from now when the principals who could correct the problems are no longer living in the area or possibly are no longer alive.



Deal Fairly With the Lender

When you present a package to the lender, give the lender full disclosure. Do not make the lender guess why you presented the loan package for approval as a certain program. Have a cover sheet with the file, that clearly and succinctly explains and highlights the positives and the negatives of the loan application. Your lender will be refreshed by the candor of your letter. As with the borrower, you cannot disclose too much to the lender. The lender does not want any surprises. The lender wants to feel comfortable about making the mortgage loan and about your integrity regarding the mortgage loan.

The Road To Truth-In-Brokering:

The road to truth-in-brokering, on a personal level for you, is through education, high ethics and the right friends. First, education through reading and through seminars will help you learn what the state and federal laws are and what is expected of you, regarding the laws and regarding your behavior.

Second, ethics classes and a high moral standard will guide you to the right decisions. When you have an ethical dilemma, simply ask yourself, “What

should I do so that the CBS television show, *60 Minutes*, would be uninterested in this transaction or in my behavior?”

Third, your group of friends has a high influence on your behavior. President George Washington stated that he would rather be alone than with the wrong friends. Sometimes, you are better off not having someone as a friend than having that friend provide you with bad influences. That “friend” could be your employee, your employer, an account representative or a colleague in the business. If the weight of your friend is preventing you from flying with the angels then you may consider dropping your friend and soaring along the right path.

Conclusion

Being trustworthy in business is not difficult. Start today in a small way and build your reputation to a high level. Your trustworthiness will be rewarded financially. Additionally, you will feel mentally and physically better about yourself.

Gary Oppen is President of Approved Financial Corporation, Weston, Florida. Approved Financial Corporation is a licensed mortgage lender. Oppen has been a Mortgage Lender and Note Buyer since 1984. Oppen brokers business notes and structured settlements nationally. Also, he does consulting for mortgage companies. He has a CPA and a CFP license. Oppen is a member of the AICPA, FICPA, NAMB, and FAMB. He may be reached at (954)384-4557, fax: (954)384-5483, and email: approv01@aol.com.

“In theory, there is no difference between theory and practice. But, in practice, there is.”

~Jan van de Snepscheut

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Division of Real Estate
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without stating the property address, but stating the neighborhood, size, square footage, and an asking price. The ad solicited buyers to contact "Buyer's Agent Scott" at American General Real Estate. The ad also characterized the property as a foreclosure when in fact the property was not a foreclosure. Neither the owner of the property nor the listing brokerage had given Mr. Nagle permission to advertise the home. #RE03-07-17.

SCHAERRER, CADE, Sales Agent, Pleasant Grove. Application for sales agent license approved on April 16, 2003, but license suspended until such time as he was released from criminal probation in connection with a misdemeanor conviction. He was subsequently released from criminal probation and activated with Americraft Realty, Inc. in Orem on June 20, 2003.

TAYLOR, DAVID L., Associate Broker, ERA Realty Center, Inc., Cedar City. Agreed to pay a \$750 fine for violating administrative rules R162-4.2 and R162-6.1.11.5. Mr. Taylor agreed to help find tenants for the owners of a home when the owners had to move

out of state. He admitted that in his eagerness to help the owners, he did not sign a property management agreement with them. He also erroneously used his own checking account for the rental activity instead of running the funds through the trust account of the brokerage with which he is licensed. Mr. Taylor maintained that in mitigation, he voluntarily took the Division of Real Estate Trust Account seminar after the time period involved in the complaint, once in February, 2002 and again in the fall of 2002. #RE20-05-24.

WILLIAMS, SCOTT L., Sales Agent, licensed with Wardley Better Homes and Gardens Midvale Branch at the time of the offense. Agreed to pay a \$1,500 fine and complete the Division of Real Estate Trust Account Seminar and a Division-approved course on agency for acting incompetently in a transaction. Williams purchased a condo from a couple who agreed to provide seller financing on the transaction. He made two payments on the condo, but then made no further payments, so the sellers commenced foreclosure. Meanwhile, Williams had quit-claimed his interest in the condo to another party who occupied it and refused to vacate. After the sellers evicted the occupant, they found that the refrigerator and stove were missing and that the property had been vandalized. #RE20-11-19.